

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

VOITH INDUSTRIAL SERVICES, INC.

and

**GENERAL DRIVERS, WAREHOUSEMEN &
HELPERS, LOCAL UNION NO. 89, AFFILIATED
WITH THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS**

**Cases 09-CA-075496
09-CA-078747
09-CA-082437**

**UNITED AUTOMOBILE, AEROSPACE AND
AGRICULTURAL IMPLEMENT WORKERS
OF AMERICA, LOCAL UNION NO. 862, AFL-CIO**

and

**GENERAL DRIVERS, WAREHOUSEMEN &
HELPERS, LOCAL UNION 89, AFFILIATED
WITH THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS**

**Cases 09-CB-075505
09-CB-082805**

ORDER¹

The Acting General Counsel's request for special permission to appeal the rulings of Administrative Law Judge Bruce Rosenstein that (1) Respondent Voith need not produce evidence in response to paragraph 22 of Subpoena Duces Tecum B-643335, and (2) witnesses cannot be examined about General Counsel exhibits 21, 34, 52, 70, 71, 72, 73, 74, 75, 78, 80, 82, 83, 85, 87 and 88 is granted. On appeal, the judge's rulings are reversed.

¹ The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

In his ruling on paragraph 22,² the judge found that the requested phone records were “not necessary and relevant as the Complaint allegation was drafted” and that they would not “enhance” the Acting General Counsel’s evidence. Tr. 562, 564-565.

Contrary to the judge, we find that the Acting General Counsel has made an adequate showing that the records are potentially relevant to the complaint paragraphs alleging that Respondent Voith provided unlawful assistance to Respondent UAW and that Respondent UAW accepted such assistance. We therefore find that the judge abused his discretion in sua sponte determining that the Respondent did not need to comply with this subpoena paragraph. Accordingly, Respondent Voith is directed to provide the subpoenaed phone records.

Regarding the ruling concerning Acting General Counsel’s exhibits, we find that the judge failed to provide an adequate explanation for his refusal to allow testimony about the documents, which he explicitly found were relevant. Counsel for the Acting General Counsel has persuasively argued that he is at a disadvantage by not being able to ask witnesses to describe, identify, date, identify the preparer of, or explain the meaning or significance of the documents. Therefore, we find that the judge abused his discretion by refusing to allow testimony about these exhibits. Accordingly, the parties are permitted to elicit testimony about these documents, subject to the judge’s discretion to limit duplicative testimony and otherwise regulate the course of the hearing

² Paragraph 22 seeks alleged supervisor “Dennis Frank’s cell phone records for any incoming or outgoing calls on April 11, 2012.” In a previously filed petition to quash the subpoena, the Respondent did not address this paragraph of the subpoena.

under Section 102.35 of the Board's Rules and Regulations.

Dated, Washington, D.C., September 19, 2012.

MARK GASTON PEARCE,	CHAIRMAN
RICHARD F. GRIFFIN., JR,	MEMBER
SHARON BLOCK,	MEMBER